

COMMONWEALTH OF THE BAHAMAS

2019/CRI/bal/FP/00061

IN THE SUPREME COURT

Criminal Division

B E T W E E N

TERRANCE ROLLE



Applicant

AND

IN THE MATTER of the Bail (Amendment) Act 2011

AND

THE ATTORNEY GENERAL

Respondent

Before: The Honourable Mrs. Justice Petra Hanna-Adderley

Appearances: Mr. Ernie Wallace holding brief for Mr. Carlson Shurland along with
Mr. Paco Deal for the Applicant
Mr. Neil Brathwaite for the Respondent

Hearing Date: November 13, 2019

DECISION ON BAIL

Hanna-Adderley, J

- 1) The Applicant is a Bahamian male citizen. He is 33 years old having been born on June 18, 1995.
- 2) The Applicant is charged with 2 counts of Murder.

- 3) The Applicant was arraigned before Magistrate's Court #1 and remanded to the Bahamas Department of Corrections on April 15, 2019.
- 4) Mr. Paco Deal, Counsel for the Applicant, submitted, in part, that the Court Must take into consideration the a number of factors found in Section 4 Part A of the Bail (Amendment) Act 2011. Some of the factors do not apply such as:
 - (1) whether the Applicant will abscond. The Applicant has never been convicted of any offence or put on bail before.
 - (2) Whether he will commit an offence while on bail. He has never been convicted on an offence or put on bail.
 - (3) Whether he will interfere with witnesses while on bail. There is no evidence of this because he has never been on bail before.
- 5) Mr. Deal then looked at the factors that do apply.
 - (1) The nature and seriousness of the offence.
 - (2) The strength of the evidence.
 - (3) The length of time he is likely to be in custody before being put on trial.
- 6) With respect to the seriousness of the offence and the strength of the evidence, the Prosecution's evidence is weak in that they have a number of witness statements that speak to a fight occurring on the night in question that mentioned Mr. Rolle being somewhat a part of the fight and all of the witnesses speak to hearing gunshots. There is no evidence in any witness statement that speaks to Mr. Rolle shooting anyone or shooting a firearm or anyone seeing him in possession of a firearm at no point in time of the incident. In fact, there is a Record of Interview of Mr. Rolle in which he admitted to being shot himself and not knowing who shot him therefore it is submitted on those grounds that the Prosecutions evidence is vague and weak at best.
- 7) As to the length of time in which Mr. Rolle can be brought to trial, Mr. Rolle was arrested on Wednesday April 10, 2019 and since that date h
- 8) The Respondent opposes the grant of bail and Mr. Neil Brathwaite Counsel for the Crown submits that the Applicant should not be granted bail. The Crown relies on the Affidavit of Sgt. Prescott Pinder in which he outlined the incident at the

Gametime Sports Bar which resulted in the death of the 2 victims. He exhibited the death certificates, the Witness Statements of Damien Thomas, Thomas Brooks and Ramon Miller. He also exhibited the a Wanted poster that has been issued for the Applicant in 2017, a Report from Detective Ramando Russell, the officer who arrested the Applicant at Lynden Pindling Airport when he was returned to The Bahamas by US Marshals, and the Applicants Record of Interview.

- 9) Mr. Brathwaite submitted that with respect to the submission that the evidence was weak, the Crown accepts this but that does not take into the account the principles of joint enterprise. The Applicant was involved in a fight with 2 others, one was his brother. That the Prosecution relies on the principles in the Bail Act in this case. The most important of which factor is the question of the Defendant surrendering for his trial. The murders occurred in February 2017. A "Wanted" poster was issued for the Applicant but he was not arrested until 2019. Detective Sergeant 2559 Ramando Russell said in his Statement that he arrested the Applicant at the Lynden Pindling Airport. He was returned to The Bahamas from the United States after his deportation. In his Record of Interview he said that he saw that he was wanted for questioning in the newspaper. This raises a concern. He knew that he was wanted and did not surrender so he may not surrender for his trial. He was brought back to The Bahamas by US Marshals. With respect to delay, the VBI will be served on him before the end of this year. That even if the Court was concerned about delay the risk of him not surrendering for trial outweighs this. The Record of Interview was made in the presence of Mr. Paco Deal he legal representative. He said he was shot but he did not get medical treatment and he did not bleed. That this is not a case to grant bail.
- 10) Mr. Deal responded that Mr. Rolle admitted that he knew he was on a Wanted poster. That when he turned himself in before in Nassau he was beaten by the Police which induced him to be fearful of the Police. He has evidence to that effect. In his Record of Interview he admitted to being on the scene and never attempted to evade any questions that placed him there which is in itself evidence that he was being cooperative from the say that he was arrested. Further, when Mr. Rolle

was shot in the leg the bullet went in and out. There was very little blood and he saw no utility in reporting it to the Police because he could not say who shot him. Mr. Rolle knew that he was wanted but he was already in the US and was informed by family members and it was always his intention to come back and enquire on the wanted poster and the allegations. However, he was arrested and not being a citizen upon serving a short 16 month sentence and 2 months waiting at the immigration centre to be sent home.

11) I have considered the Statements of Mr. Damien Joseph Tomas, the owner of the Game Time Restaurant & Bar ("the Bar"), given on February 3 and 5, 2017 and April 15, 2019, Mr. Thomas Edward Brook, a security officer at the Bar and Mr. Ramon Miller, the DJ at the Bar and the Record of Interview of the Applicant. In his statements given in 2017 Mr. Thomas spoke of an argument breaking out between a group of 3 men and a group of 2 men. He did not know the 3 men by name or by face. He did not know the 2 men by name. He later found out that one of the 2 men was "Junior". He managed to calm the situation down in the Bar. Then one of the 3 men suggested that they all go outside to "reason" things out. His security officer, grabbed one of the 2 men, Junior, who was the more aggressive of the 2 and he held him in order to bring calm to the situation. Junior broke free of the security officer and a fight broke out between the men. Shortly after that he heard a first gun shot, then a second gun shot and then he saw the 3 men running towards a black Honda. They sped off in it. He walked over to where he saw the 2 men lying on the ground. He noticed that they were both shot. He called 911. He showed the police his camera system when they arrived and they took it with them. In his first statement he said that he was not sure if he could recognize any of the men. Two days later he picked the 3 men out of a photo lineup. In his Statement in 2019 he again identified the 3 men, one of whom is the Applicant, from a photo line-up.

12) Mr. Thomas Edward Brook stated in his Statement that he witnessed the fight between the 5 men and that when he tried to intervene he heard gunshots in the air so he stopped and returned to the entrance of the Bar. He heard 3-4 more

gunshots but they did not sound as if they were coming from in the midst of the fight. The men were still fighting. One of the 2 men fell to the ground and 2 of the 3 were standing over him kicking him. He attempted to push the men off the man on the ground. The 2 men ran away. The male on the ground was shot, blood was coming from the side of his shirt. The other male was lying on a wall with blood to his face. He dialed 919. The males involved are not males who frequented the Bar. He suspected that they were resident in Bimini because of what one of them had said about Bimini before the fight broke out. He identified the 3 men, one of whom was the Applicant, from a photo lineup.

13)Mr. Ramon Miller stated that he saw the fight breaking out at the Bar. He recognized one of the men as someone he knew a "Junior" from around the ghetto. He was fighting next to a guy he knows as "Lucas". They got pushed outside the Bar by security. Then he heard what sounded like multiple gun shots and he saw people running. He decided to leave and when he got in the parking lot he saw Junior and the guy he was with on the ground. They appeared to be shot. He saw Lucas and his brother stomping the men on the ground. Then they took off running.

14)In his Record of Interview the Applicant stated that Lucas Rolle was his brother. That he knew Kayas Duncombe, that his sister had a son for him. That on the night in question he and his brother went to the Bar. Kayas met them there later on. He denied getting into an argument with 2 males. He did not see anyone get into an argument. He was never in any altercation while there. That he did not know the deceased persons. That did not shoot anyone. That he was shot in his leg by an unknown person. That he left the Bar and went home. That he did not seek medical attention because the wound was not painful. That he did not shoot himself. That he saw the "Wanted" poster concerning him in the newspaper. He did not surrender to the Police because in 2010 he turned himself into the Police in Nassau and he beaten.

15)The onus is upon the Crown to satisfy the Court that the Applicant ought not be granted bail and the standard of proof is on a balance of probabilities.

16)Articles 19(3) and 20(1) and (2) of the Constitution of The Bahamas guarantee the presumption of innocence and the general right to liberty to the individual.

17)Section 4, Part A of the Bail (Amendment) Act 2011 provides:

"In considering whether to grant bail to a defendant, the court shall have regard to the following factors—

(a) whether there are substantial grounds for believing that the defendant, if released on bail, would-

(i) fail to surrender to custody or appear at his trial;

(ii) commit an offence while on bail; or

(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

(b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;

(c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;

(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;

(e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;

(f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;

(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

18)The Court has to consider the character and antecedents of an Applicant. The Applicant has no antecedents or matters pending before the Court in this jurisdiction. He admits to having been incarcerated for 16 months in and detained for another 2 months and eventually deported from the United States of America.

19)The presumption of innocence is enshrined in The Constitution of the Bahamas. A

bail application is essentially an assessment between the competing interests of the Applicant and the Community. The facts and circumstances of each case is different and needs an individual assessment.

20) In considering all the circumstances relevant to this hearing I find that the Respondent has not satisfied me that this Applicant ought not to be granted bail pending his trial and I hereby grant bail for the following reasons:

(i) In **Jonathan Armbrister** John, JA stated at page 8 of the judgment:

“The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail.”

Murder is a serious offence, the nature and seriousness of which in my view weigh heavily against the grant of bail. But this is but one factor that the Court must consider.

(ii) The only evidence against the Applicant are the Statements of 2 Witnesses for the Crown who identified the Applicant from a photo lineup as a participant in the fight with the 2 deceased persons and Miller who knew him as Lucas Rolle's brother. The Applicant admitted that he was at the scene but that he was not in any argument or fight with anyone, that he did not shoot anyone and that he got shot by somebody. None of the witnesses saw the Applicant or his co-defendants with a gun, no-one saw any of them shoot the deceased persons, no forensic evidence linking the Applicant to a gun or to the deceased persons has been adduced. The only thing known is that the 2 deceased persons died from gunshot wounds during a fight at the Bar in which the Applicant on the balance of probabilities was a participant.

(iii) In the **A.G. v Bradley Ferguson and Others** SCCr. App 57/2008 Osadebay JA cited with approval the statement of Coleridge J In the matter

of **Etiene Barronett and Edmund Allain** 1 EL & BL 2 where in expressing his reasons for refusing bail Coleridge J said:

"I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried, and because the detention is necessary to insure his appearance at the trial. The guilt of the party charged is not the direct ground on which he is detained in custody; and that the strength of the evidence of guilt, even when it amounts to a confession, is not conclusive as to the propriety of bailing. But it is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point, three elements will generally be found the most import: The charge, the nature of the evidence by which it is supported, and the punishment to which the party will be liable if convicted. "

The charge of murder carries with it a heavy punishment, that is, life in prison and in some cases the death penalty. What then is the strength of the evidence of guilt against the Applicant? The charge is that the Applicant while being concerned with others caused the death of the Deceased persons by gunshot. I am of the view that the evidence of the Crown is weak in this case. The Applicant's Record of Interview provides no corroboration for the actual shooting of the deceased persons.

- (iv) There is no evidence before the Court to suggest that he might abscond or that he will interfere with the witnesses. The Applicant after becoming aware of the wanted poster was not obligated to turn himself into the Police. There is no information before the Court as to when he left the jurisdiction and whether he did so to evade the Police, although judging from the amount of time he was incarcerated abroad he may have left the jurisdiction in close proximity to this event. With respect to whether he will interfere

with witnesses, John, JA in Jonathan Armbrister stated at page 11:

"In acknowledging that the strict rules of evidence are inherently inappropriate in deciding the issues whether bail ought to be refused we sound the warning that a naked statement from the Prosecution that "the witnesses are known to the appellant and so he is likely to interfere with them" without more, is unfair to the accused person and cannot stand alone. "

- (v) There has been no unreasonable delay thus far.
- (vi) The Applicants character and antecedents are also considerations for the Court when deciding whether to admit the Applicant to bail. The Applicant has no previous convictions and no matters pending before the Court in this jurisdiction. The Court has no information as to what he was incarcerated for abroad. There is therefore no evidence before the Court that there is a real likelihood that he will commit an offence if put on bail.
- (vii) It does not appear that the Applicant should be remanded in custody for his own protection.

21) In weighing all of the competing considerations hereinbefore-mentioned with interests of the community, with the presumption of innocence and the strength and reliability of the evidence at this juncture, I am satisfied that the Applicant is a fit candidate for the grant of bail.

22) Bail is granted to the Applicant in the sum of \$25,000.00 CASH or real property one or two Sureties upon the following conditions:

- (i) The Applicant is to be fitted with an ankle monitor.
- (ii) The Applicant is subjected to a curfew from between the hours of 9:00 p.m. and 6:00 a.m. daily.
- (iii) The Applicant is to report to Alice Town Police Station, Bimini every Monday, Wednesday and Friday by 6:00 p.m.
- (iv) The Applicant is to surrender his travel documents to the Court.

- (v) The Applicant is not to contact or interfere with any of the Crown's witnesses either by himself or through his agents.

This: ~~13~~¹⁴ day of November, 2019


Petra M Hanna-Adderley
Justice